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28393 7590 02/17/2009 STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVE., N.W. WASHINGTON, DC 20005				
EXAMINER ELAHEE, MD S				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/934,121

Applicant(s)

BYRNE ET AL.

Examiner

MD S. ELAHEE

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 and 56-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18 and 56-88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-144a or PTO-836a)
Paper No(s)/Mail Date 01/26/2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Intervenor Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Examiner has decided to withdraw the finality of last office action mailed on 03/18/2008. It is because, a rejection under 112, first paragraph and a proper rejection under 101 of claims 74-82, 87 and 88 was not given in the previous office action.

Response to Amendment

1. This action is responsive to an amendment filed on 09/18/2008. Claims 10-18 and 56-88 are pending. Claims 1-9 and 19-55 have been previously cancelled. Claims 83-88 have been newly added.

Response to Arguments

2. Applicant's arguments filed on 09/18/2008 Remarks regarding claims rejection in view of Surace have been fully considered but they are not persuasive because of the following:

1) Regarding claim 10, the applicant argues that Surace does not teach enabling the user to specify individual character traits desired in a virtual host wherein the specified character traits are used to select a consistent personality for the virtual host. Examiner respectfully disagrees with this argument for the following reason:

In page 9, paragraph 0113, Surace teaches enabling a subscriber/developer [i.e., user] to specify the subscriber's needs or subscriber's own personality [i.e., individual character traits] so that the subscriber/developer can select a voice user interface with a personality of a particular

virtual assistant (see step 304 of Fig.3, the developer selects the personality type). It clearly means that Surace teaches enabling the subscriber [i.e., user] to specify the subscriber's needs or subscriber's own personality [i.e., individual character traits] desired in a virtual assistant [i.e., virtual host] wherein the specified character traits are used to select a consistent personality for the virtual host.

2)The applicant further argues that Surace does not teach storing the specified personality information in a user profile having preference information for a user. Examiner respectfully disagrees with this argument for the following reason:

In fig.3,

at step 304, the developer selects the personality type.

at step 306, an actor with the required personality is chosen.

at step 316, the actor records the prompt.

after the prompt is recorded, the consumer calls into the system and the recorded prompt is generated (with the required personality) and played back to the consumer.

Therefore, it is clear that the developer stores the selected personality type on a profile and then virtual host is generated using the selected personality type (see page 12, paragraphs 0145-0147,0149).

Thus, the rejection of the claim in view of Surace will remain.

Claims 56, 65 and 74 are also rejected for the same reasons as discussed above with respect to claim 10. Since claims 11-18, 57-64, 66-73 and 75-82 are dependent claims, these claims are also rejected for the same reasons as discussed above with respect to claim 10.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 74-82, 87 and 88 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Claims 74 and 87 recite a computer program product comprising a computer usable medium having computer program logic recorded thereon for enabling a processor to provide a voice interface to an end user. Claim language does not comply with the requirements of MPEP 2106.01.I. The “computer usable medium” is only recited once in the invention disclosure (Preamble of Claims 74 and 87. Since the “computer usable medium” is not defined in the

disclosure, it may encompass a variety of media ranging from a piece of paper to a carrier wave/signal, communication or transmission type of medium. Furthermore, “computer program logic” or “software” is merely a set of instructions. Computer program is data structure. Data structures not claimed as embodied in computer-readable or machine-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer or machine. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1754 (claim to a data structure per se held nonstatutory). Claims 74 and 87 fail to include practical application that produces either (1) tangible, concrete and useful result or (2) physical transformation. Therefore, since the claimed computer usable medium does not comprise instructions to cause a processor to perform the specifying, storing and generating functions of the claims then the Applicant has not complied with 35 U.S.C 101. Since claims 75-82 and 88 are dependent claims, these claims are also rejected.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 74-82, 87 and 88 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation “a computer program product comprising a computer usable

medium having computer program logic recorded thereon for enabling a processor to provide a voice interface to an end user” of claim 74 in lines 1-3, are not disclosed in the original specification.

Claim 87 is rejected for the same reasons as discussed above with respect to claim 74. Since claims 75-82 and 88 are dependent claims, these claims are also rejected.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 10, 56, 65 and 74 are rejected under 35 U.S.C. 102(e) as being anticipated by Surace et al. (U.S. 2005/0091056).

Regarding claim 10, with respect to Figures 1-3, Surace teaches a method of providing a voice user interface for a user comprising:

enabling the subscriber/developer [i.e., user] to specify personality information [i.e., character traits] desired in a virtual assistant [i.e., virtual host] wherein the specified character traits are used to select a consistent personality for the virtual host (fig.3; page 3, paragraphs 0041-0046, 0048-0050, page 8, paragraph 0102, page 9, paragraphs 0112, 0113);

Surace further teaches storing the specified personality information in a user profile having preference information for an actor [i.e., user] (page 8, paragraph 0103, page 9, paragraphs 0112, 0113, page 12, paragraphs 0145-0147, 0149) (Note; In fig.3, at step 304, the developer selects the personality type, at step 306, an actor with the required personality is chosen, at step 316, the actor records the prompt, after the prompt is recorded, the consumer calls into the system and the recorded prompt is generated (with the required personality) and played back to the consumer. Therefore, it is clear that the developer stores the selected personality type on a profile and then virtual host is generated using the selected personality type (see page 12, paragraphs 0145-0147,0149).); and

Surace further teaches generating the virtual assistant with the consistent personality in accordance with the specified personality information (fig.1, 3; page 2, paragraph 0029, page 3, paragraph 0049, page 7, paragraph 0092, page 8, paragraph 0102).

Claim 56 is rejected for the same reasons as discussed above with respect to claim 10. Furthermore, Surace teaches with respect to Figures 1-3, Surace teaches a method of providing a voice user interface to an end user comprising:

enabling the user to specify personality information [i.e., character traits] desired in a virtual assistant [i.e., virtual host] wherein the specified character traits are used to select a consistent personality for the virtual host, wherein the individual character traits are specified by the end user of the voice interface (fig.3; page 3, paragraphs 0041-0046, 0048-0050, page 8, paragraph 0102, page 9, paragraphs 0112, 0113).

Claim 65 is rejected for the same reasons as discussed above with respect to claim 56. Furthermore, Surace teaches a memory (fig.1, item101, fig.2, item 201); and a processor (fig.1, item105, fig.2, item 211) operable to process logic (page 2, paragraph 0032).

Claim 74 is rejected for the same reasons as discussed above with respect to claim 56.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 11, 57, 66 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Staples et al. (U.S. Patent No. 6,301,339).

Regarding claims 11, 57, 66 and 75, Surace, as applied to claims 10, 56, 65 and 74, fails to teach “information defining a tone of voice for the virtual host”. Staples teaches information specifying [i.e., defining] the tones for the client software [i.e., virtual host] (col.41, lines 48-67, col.42, lines 1-10). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a tone of voice as taught by Staples. The motivation for the modification is to have the information defining a tone of voice in order to provide the specific characteristic.

13. Claims 12, 58, 67 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Sakurai et al. (U.S. Patent No. 5,189,702).

Regarding claims 12, 58, 67 and 76, Surace, as applied to claims 10, 56, 65 and 74, fails to teach “information defining a speed of voice for the virtual host”. Sakurai teaches information enabling [i.e., defining] a speed of voice for the host equipment [i.e., virtual host] (col.3, lines 33-49). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a speed of voice as taught by

Sakurai. The motivation for the modification is to have the information defining a speed of voice in order to provide the specific characteristic.

14. Claims 13, 59, 68 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Eikeland (U.S. Patent No. 5,768,508).

Regarding claims 13, 59, 68 and 77, Surace, as applied to claims 10, 56, 65 and 74, fails to teach “information defining a background for the virtual host”. Eikeland teaches information defining a background for the client [i.e., virtual host] (col.7, lines 58-67, col.8, lines 37-40). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a background as taught by Eikeland. The motivation for the modification is to have the information defining a background in order to provide the specific characteristic.

15. Claims 14, 60, 69 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Duffy et al. (U.S. Patent No. 5,911,043).

Regarding claims 14, 60, 69 and 78, Surace, as applied to claims 10, 56, 65 and 74, fails to teach “information defining a sex for the virtual host”. Duffy teaches information defining a sex for the user [i.e., virtual host] (col.1, lines 63-67, col.2, lines 1-12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a sex as taught by Duffy. The motivation for the modification is to have the information defining a sex in order to provide the specific characteristic.

16. Claims 15, 61, 70 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Bijl et al. (U.S. Patent No. 6,366,882).

Regarding claims 15, 61, 70 and 79, Surace, as applied to claims 10, 56, 65 and 74, fails to teach “information defining an accent for the virtual host”. Bijl teaches information defining an accent for the user [i.e., virtual host] (col.14, lines 6-13). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining an accent as taught by Bijl. The motivation for the modification is to have the information defining an accent in order to provide the specific characteristic.

17. Claims 16-18, 62-64, 71-73 and 80-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Wigan et al. (U.S. Patent No. 4,531,184).

Regarding claims 16, 62, 71 and 80, Surace, as applied to claims 10, 56, 65 and 74, fails to teach “information defining a formality level of a conversational style for the virtual host”. Wigan teaches information defining a formality level of a conversational facility [i.e., style] for the subscriber [i.e., virtual host] (col.31, lines 32-67, col.32, lines 1-67, col.33, lines 1-67, col.34, lines 1-3). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a formality level of a conversational style as taught by Wigan. The motivation for the modification is to have the information defining a conversational style in order to provide the specific characteristic.

Regarding claims 17, 63, 72 and 81, Surace, as applied to claims 16, 62, 71 and 80, teaches updating [i.e., adjusting] the prompt [i.e., conversational-type] based on the user interaction history information (page 8, paragraphs 0102, 0103).

Regarding claims 18, 64, 73 and 82, Surace, as applied to claims 17, 63, 72 and 81, teaches changing the formality level according to a level of user experience with the voice user interface (abstract; page 1, paragraph 0007, page 8, paragraphs 0102, 0103).

18. Claims 83-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Eisen et al. (U.S. Patent No. 4,964,077).

Claims 83, 85 and 87 are rejected for the same reasons as discussed above with respect to claim 10. Furthermore, Surace teaches updating [i.e., adjusting] a prompt [i.e., conversational style] of the virtual host and adjusting the conversational style (page 8, paragraphs 0102, 0103).

However, Surace does not specifically teach querying the user for permission to adjust a conversational style if user interaction history reaches a threshold and adjusting the conversational style if the user grants permission. Eisen teaches querying the user for approval [i.e., permission] to adjust a help/dialog [i.e., conversational style] if user interaction history reaches a threshold and adjusting the conversational style if the user grants permission (fig.4;

col.7, line 46-col.8, line 7). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to incorporate the feature of querying the user for permission to adjust a conversational style if user interaction history reaches a threshold and adjusting the conversational style if the user grants permission as taught by Eisen. The motivation for the modification is to do so in order to provide a secured storage for a user prompt/dialog such that no body can change the prompt/dialog without the user permission.

Claims 84, 86 and 88 are rejected for the same reasons as discussed above with respect to claim 18.

Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MD S. ELAHEE whose telephone number is (571)272-7536. The examiner can normally be reached on Mon to Fri from 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Primary Examiner
Art Unit 2614
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